
SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY
WRIT APPEAL NO. 1029 OF 2006

BETWEEN

P.V. Appa Rao

.....Appellant

And

The Joint Collector (Assignment)
Visakhapatnam District & others.

.....Respondents

Counsel for the appellant : Shri Noushad Ali

Dated: 13.10.2006

::JUDGMENT::

Per G.S. SINGHVI, CJ

Feeling dissatisfied with order dated 07.08.2006 passed by the learned Single Judge in Writ Petition No.8879 of 2006 whereby he refused to nullify orders dated 25.07.2001, 11.12.2002 and 24.01.2005 passed by Mandal Revenue Officer, Chenagadili Mandal, Revenue Divisional Officer, Visakhapatnam and Joint Collector (Assignments), Visakhapatnam District respectively, the appellant has preferred this appeal under Clause 15 of the Letters Patent.

The appellant's father Shri Adiyya is said to have been assigned Acs.5.00 of land under ex-serviceman quota vide order Rc.No.389/92 dated 22.05.1982 issued by District Collector, Visakhapatnam. In November 2000, the appellant's father is said to have sold the land to Smt. Sathyavathi and P. Rajender Prasad Gupta and got the sale deeds registered despite initial objection by the registering authority. Although it is not clear from the record as to when the appellant's father applied for issue of pattadar pass book, this much is clear that Writ Petition No.5811 of 2001 filed by him for issue of a direction to Mandal Revenue Officer, Chenagadili Mandal to decide his application was disposed of by the learned Single Judge with the direction to decide the pending application. In compliance of that direction, respondent No.3 passed order dated 25.07.2001 refusing to issue pattadar pass book by observing that the genuineness of the document produced by the applicant was doubtful. Appeal and revision preferred by the appellant (his father is said to have died on 06.10.2001) were dismissed by respondent Nos. 2 and 1 respectively by detailed speaking orders dated 11.12.2002 and 24.01.2005. For the sake of reference, the relevant extracts of the last mentioned order are reproduced below:

"I have perused the grounds of revision petition and connected records. The land covered by S.No.336 is classified as Hill Poramboke. Its total extent is Ac.1328-25 cts., out of which an extent of Ac.312-68 was alienated to VUDA and Rama Naidu Film Studio and an extent of Ac.185-01 is proposed to alienate to S.V.L.N. Devasthanam, A.P. Transco Engineers, Wakf Board and Prema Hospital. There are no sub-divisions in the S.No.336 and also there is no such survey No.336/1A as per F.M.B. and other records. The entire land in S.No.336 except the land alienated to VUDA and Ramanaidu Studio is vacant. There are no traces of cultivation or occupation on the ground. The records produced by the petitioner have been verified with reference to the records available, but they are not tallied. The signatures and writing of the V.M, Madhurawada on the Land Receipts produced have also been verified with the signatures of the V.M., Madhurawada available in the L.R. Receipts. In the receipts produced by the petitioner, the signature of the V.M. was mentioned as V.H.M. There was no V.H.M. post for the Madhurawada village. There is only post of V.M. for the Madhurawada village either in the year 1972 or in the year 1985. The writing of the V.M. Madhurawada in the receipts produced by the petitioner have also been verified with the writing available in the other receipts of Madhurawada village and found not tallied with each other. The signature of the then Tahsildar, Visakhaptnam available on the xerox copy of D form patta produced by the petitioner has not been tallied with the signatures of the Tahsildar in that period. The name of the applicant is also not found in any revenue records.

The MRO, VSP Rural has issued a notice to the petitioner with a direction to show the land where he stated to be cultivated since the S.No.336 is having huge extent of Ac.1328-25. The authorized person of the petitioner has shown the land to the MRO, Vsp. Rural.

The MRO, Vsp. Rural has inspected the land in question along with the representative of the petitioner and that the land shown is situated adjacent to S.No.127 and 100 feet road to Kapuluppada village. The land claimed by the petitioner was merged in the land Ac.80-00 which handed over to the VUDA recently. There are no structures or standing trees on the land.

In view of the above circumstances, there is no evidence that the land was under occupation of claimant. Revenue records, clearly show that the land is poramboke. Further, the veracity of the documents 'photo copies' produced by the claimant are doubtful. The land has been handed over to VUDA. Appeal rejected. Mandal Revenue Officer's/Revenue Divisional Officer's orders upheld."

The appellant challenged the aforementioned three orders in Writ Petition No.8879 of 2006. The learned Single Judge, after examining the original record produced by the learned Government Pleader, dismissed the same by observing that the writ petition was highly belated and the finding recorded by the competent authorities on the genuineness of the patta is a finding of fact, which does not warrant interference. The observations made by the learned Single Judge on these two points are extracted below:

" This Court has perused the file. The same would show that the order of the Joint Collector bearing Rc.No.1376/2004, dated 24.1.2005 was dispatched on 31.1.2005 itself. The same was addressed to M/s S. Bhaskar and V.N. Murthy, Advocates, and as per the postal stamp, the same was served on 01.2.2005. Therefore, the statement made by the learned counsel for the petitioner that the copy of the impugned order was served on the petitioner on 27.6.2005 stands disproved. This Court, therefore, holds that the writ petition is barred by limitation. Secondly, the submission of the learned counsel for the petitioner that MRO has not considered the documents produced by the petitioner and that the Joint Collector has ignored the documentary evidence produced by the petitioner cannot be accepted. Apart from perusing the impugned order, this Court has perused the original files from the office of the MRO as well as the District Collector relevant to the case on hand. The Revenue Authorities have considered all the aspects of the matter, verified all the records and came to the conclusion that the land in Survey No.336 is classified and registered as Hill Poramboke, which is a Government poramboke land. When the land is registered as Government land, under Section 12 of ROR Act, records of rights and pattadar passbooks cannot be issued. Nextly, the petitioner relied on the patta granted to his father and the revenue receipts issued by Madhurawada Village Head Munsif. These were found to be fake ones by the Joint Collector by giving valid reasons. It is a question of fact and the finding given by the ultimate quasi-judicial authority on the question of fact does not warrant

any interference. There is no perversity in such findings.”

Shri Noushad Ali made efforts to persuade us to entertain the appeal and issue a direction to the respondents to make enquiry to fix the responsibility of the officer/employee, who is said to have fabricated patta issued in favour of the appellant's father by emphasizing that the reasons assigned by the authorities constituted under the Act cannot be treated as legally sustainable and justified. Learned counsel emphasized that the refusal of the respondents to grant pattadar pass book in favour of the appellant's father on the ground that the land is recorded as Government poramboke is also legally untenable because similar parcels of land have been allotted for film studio and for other purposes.

We have considered the submissions of the learned counsel, but have not felt persuaded to upset the finding recorded by respondent Nos. 3, 2 and 1 respectively.

The parameters for exercise of power by the High Court under Article 226 of the Constitution of India to interfere with orders etcetera passed by the Subordinate Courts, Tribunals and quasi-judicial authorities are well defined. It is well-settled that a writ of certiorari can be issued against an order passed by the Subordinate Court or Tribunal or a quasi-judicial authority if the same is without jurisdiction or is in excess of the jurisdiction or is violative of the rules of natural justice or is vitiated by an error of law apparent on the face of the record. To put it differently, the High Court can issue a writ of certiorari if it is found that the order under challenge has been made by the Court or Tribunal or quasi-judicial authority which did not have the jurisdiction to pass such order or where such Court, Tribunal or Authority has failed to exercise the jurisdiction vested in it or where the action complained of has been taken in disregard of rules of natural justice. A writ of certiorari can also be issued if it is shown that while passing the order under challenge the Subordinate Court, Tribunal or quasi-judicial authority ignored legally admissible evidence or took into consideration inadmissible evidence or overlooked relevant material or the order is based on extraneous consideration/factors. However, a writ Court cannot sit in appeal over the orders of the Subordinate Court, Tribunal or quasi-judicial authority and interfere with the findings and conclusions recorded by such Court, Tribunal or Authority merely because on a re-appreciation of evidence different finding or conclusion is possible. The writ Court cannot go into sufficiency and adequacy of evidence which may have been relied by the Subordinate Court, Tribunal or quasi-judicial authority for reaching a particular finding or conclusion.

In **Syed Yakoob v. K.S. Radhakrishnan**^[1] the Supreme Court considered the High Courts' power to issue a writ of certiorari and held:

“A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of

certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court.”

In **Surya Dev Rai v. Ram Chander Rai**^[2] the Supreme Court noted the history of the development of High Court’s jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

“The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappraisal or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where “a stitch in time would save nine”. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.”

If the appellant’s case is examined in the light of the above mentioned decisions, we do not find any reason to interfere with the finding of fact recorded by respondent No.3, which has been confirmed by respondent Nos.2 and 1 respectively that the patta produced by the appellant’s father was not genuine. This finding is based on a correct appreciation of evidence produced by the appellant’s father and as the appellant has not been able to show that the finding suffers from an error of law apparent on the face of the record, it is not possible to entertain his prayer for quashing the orders impugned in the writ petition. Mere possibility of forming a different opinion by this Court or coming to a different conclusion cannot justify exercise of power by this Court under Article 226 of the Constitution.

The argument of Shri Noushad Ali which is suggestive of discrimination having been practiced against his client cannot be entertained because it is an established proposition of law that Article 14 of the Constitution is not available for enforcing negative equality. If the authorities concerned have allotted government poramboke to others, the same has to be treated as nullity and the Court cannot issue a direction to the respondents to commit similar illegality in favour of the appellant.

In the result, the appeal is dismissed.

As a sequel to dismissal of the writ appeal, W.A.M.P.No.2202 of 2006 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

13.10.2006
ksld

[\[1\]](#) AIR 1964 SC 477

[\[2\]](#) AIR 2003 SC 3044